

DAN LOVELADY

IBLA 83-417

Decided May 26, 1983

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 65843 through CA MC 65845.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work of Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file with BLM a notice of intention to hold the claim or evidence of the performance of assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

APPEARANCES: Dan Lovelady, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Dan Lovelady appeals the California State Office, Bureau of Land Management (BLM), decision of January 24, 1983, which declared the unpatented Lobo #1, #2, and #3 placer mining claims, CA MC 65843 through CA MC 65845, abandoned and void because no proof of labor or notice of intention to hold the claims was filed for 1981 with BLM prior to December 31 as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

Appellant asserts he mailed the 1981 proof of labor in July 1981, after recording it in Siskiyou County, California. A copy of the proof of labor

recorded July 13, 1981, in Siskiyou County accompanied the appeal. Also with the appeal are statements from Sherry Lovelady and Earl Green, each attesting to the fact that each had witnessed Dan Lovelady make a copy of the recorded proof of labor, place it in an envelope addressed to BLM, and deposit the envelope with the Postal Service.

BLM reports that it has no record of the 1981 proof of labor for these claims, after checking in all relevant case files.

[1] Under section 314(a) of FLPMA, the owner of a mining claim located after October 21, 1976, must file a notice of intention to hold the claim or evidence of assessment work performed on the claim on or before December 30 of each year following the calendar year in which the claim was located. This requirement is mandatory, not discretionary, and failure to comply is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980).

Although appellant asserts that the proof of labor was actually mailed, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even if there was loss of the envelope containing the evidence of assessment work by the Postal Service, that fact would not excuse appellant's failure to comply with the cited regulations. Regina McMahon, 56 IBLA 372; Everett Yount, 46 IBLA 74 (1980). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f). The filing requirement is imposed by statute, and this Board has no authority to waive it. Lynn Keith, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

C. Randall Grant, Jr.  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

